

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. S-2453-A & S-2726**

**PETITION OF ACADEMY CHILD DEVELOPMENT CENTER, INC.**

**OPINION OF THE BOARD**

(Opinion Adopted October 22, 2008)

(Effective Date of Opinion: February 9, 2009)

Case No. S-2453-A is an application to modify an existing special exception for a Child Day Care Facility (Zoning Ordinance Section 59-G-2.13.1), and Case No. S-2726 is an application for a special exception for a Private Educational Facility (Zoning Ordinance Section 59-G-2.19) for a school of up to 40 first and second grade students.

The Hearing Examiner for Montgomery County held a hearing on the applications on July 11, 2008, closed the record in the case on September 22, 2008, and on October 3, 2008, issued a Report and Recommendation for approval of the applications, subject to conditions.

**Decision of the Board:** Special Exception and Special Exception  
Modification **Granted**, Subject to Conditions.

The subject property is Lot 1, Block A, and Parcel 60, Travillah Heights Subdivision, located at 10107 Darnestown Road, Rockville, Maryland, 20852, in the R-90 Zone

The Board of Appeals considered the Report and Recommendation at its Worksession on October 22, 2008. After careful consideration, and review of the record, the Board adopts the Report and Recommendation, with a slight revision to Condition No. 16, and grants the modification and new special exception, subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. All terms and conditions of the approved special exception in S-2453 shall remain in full force and effect, except as modified by the Board as a result of the subject modification petition, S-2453-A.

3. Petitioner must apply for Preliminary Plan review and recordation of a plat, per Chapter 50 of the Montgomery County Code. Since the proposed use will require subdivision, in accordance with Zoning Ordinance §59-G-1.21(a)(9), approval of this special exception is conditioned upon approval of a preliminary plan of subdivision by the Planning Board. If changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must request modification of these special exceptions from the Board of Appeals.
4. Petitioner must comply with the terms of its Site Plan (Exhibit 53(e)), its Landscape and Signage Plan (Exhibit 53(f)); its Lighting Plans (Exhibits 53(g) and (h); and its Canopy Plan (Exhibit 53(i)).
5. Petitioner must comply with the conditions of the Preliminary Forest Conservation Plan, Exhibits 41(d) and (e), until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.
6. Petitioner must comply with the stormwater management plan ultimately approved by DPS.
7. Petitioner must comply with its revised Transportation Management Plan (Exhibit 53(a)). Under the TMP, Petitioner may permit trucks and busses to make a left-hand turn out of their driveways, but passenger vehicles may exit with a right turn only. These restrictions must be strictly monitored and enforced in accordance with the TMP. If changes in the TMP are made at subdivision, Petitioner must request a modification of these special exceptions from the Board of Appeals to so reflect.
8. The number of employees for the combined uses may not exceed 31 on site at any given time.
9. Petitioner's day care enrollment cap is increased from 88 to 118, and Petitioner may enroll up to 40 first and second grade students under its new Private Educational Institution special exception, but no more than 130 children, combined, may be on site at any one time.
10. Regular weekday hours are restricted to between 6:30 A.M. and 6:45 P.M., Monday through Friday, 12 months a year, in the manner specified in the Statement of Operations (Exhibit 41(k)). Petitioner may conduct training of parents and employees and miscellaneous activities specified in the Statement of Operations after hours and on weekends, but must comply with the conditions specified therein. The permitted hours of such events shall be 9:00 a.m. to 2:30 p.m. for Saturday events and no later than 9:00 p.m. on weekdays, with the maximum number of events and the maximum attendance specified in the Statement of Operations.

11. Petitioner must comply with all Maryland State and Montgomery County licensure requirements and standards for the operation of a child day care facility and a private educational institution.
12. In accordance with Code § 59-G-2.13.1(a)(4), the Petitioner is bound by the Affidavit of Compliance submitted in connection with this case, Exhibit 28, Attachment 13, in which Petitioner certified that it will comply with and satisfy all applicable State and County requirements, correct any deficiencies found in any government inspection, and be bound by the affidavit as a condition of approval for the special exception.
13. In no event may a child be dropped off before a staff member is present to supervise that child; nor may a child be left alone if a parent is late in making a pick-up. Children must be escorted to and from the facility entrance by an adult.
14. All children must be under the direct supervision of a staff member at all times, both inside and outside the building.
15. Petitioner must ensure that trash and recycling pickups and lawn maintenance do not take place before 9 a.m. Monday through Saturday, nor before 10 a.m. on Sundays.
16. Outdoor play may not begin before 9:00 a.m. on the northwest play area adjacent to Parcel 50. No amplified sound of any kind may be used in the northwest play area adjacent to Parcel 50, and no more than 20 children may use that play area at any one time.
17. The Petitioner shall not use a public address system of any kind outside the building, nor shall any amplified music be played outside the building, with the following exception: Petitioner may use a tape or compact disc player to play music, only in the northeast play area on Lot 1 and/or under the Pavilion on the eastern side of the property (currently called Parcel 60), under the following conditions – Such music may be played only after 9:30 a.m. on weekdays; must not produce noise exceeding 50 dBA at the western property line; and is limited to one hour per day.
18. The Petitioner shall maintain the grounds in a clean condition, free from debris, on a daily basis.
19. Petitioner may display one freestanding sign and one building sign as depicted on the Landscape and Signage Plan (Exhibit 53(f)), if they are approved by the Department of Permitting Services and a permit is obtained. A copy of the permit should be filed with the Board of Appeals before the sign is posted. If a sign variance is required, Petitioner must obtain such a variance and file a copy with the Board of Appeals before the sign is posted.
20. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits,

necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by Catherine G. Titus, Vice-Chair, seconded by David K. Perdue, with Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

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Catherine G. Titus  
Acting Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 9<sup>th</sup> day of February, 2009.

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Katherine Freeman  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.